14

THE Nature and Kinds OF SIMONY DISCUSSED.

Wherein it is Argued,

Whether Letting an Eccleſiaſtical Juriſdiction to a Lay-Surrogate, under a Yearly Penſion reſerved out of the Profits, be reducible to that Head.

And a Sentence in a Cauſe depending about it near Six Years in the Court of Arches, *is Examined.*

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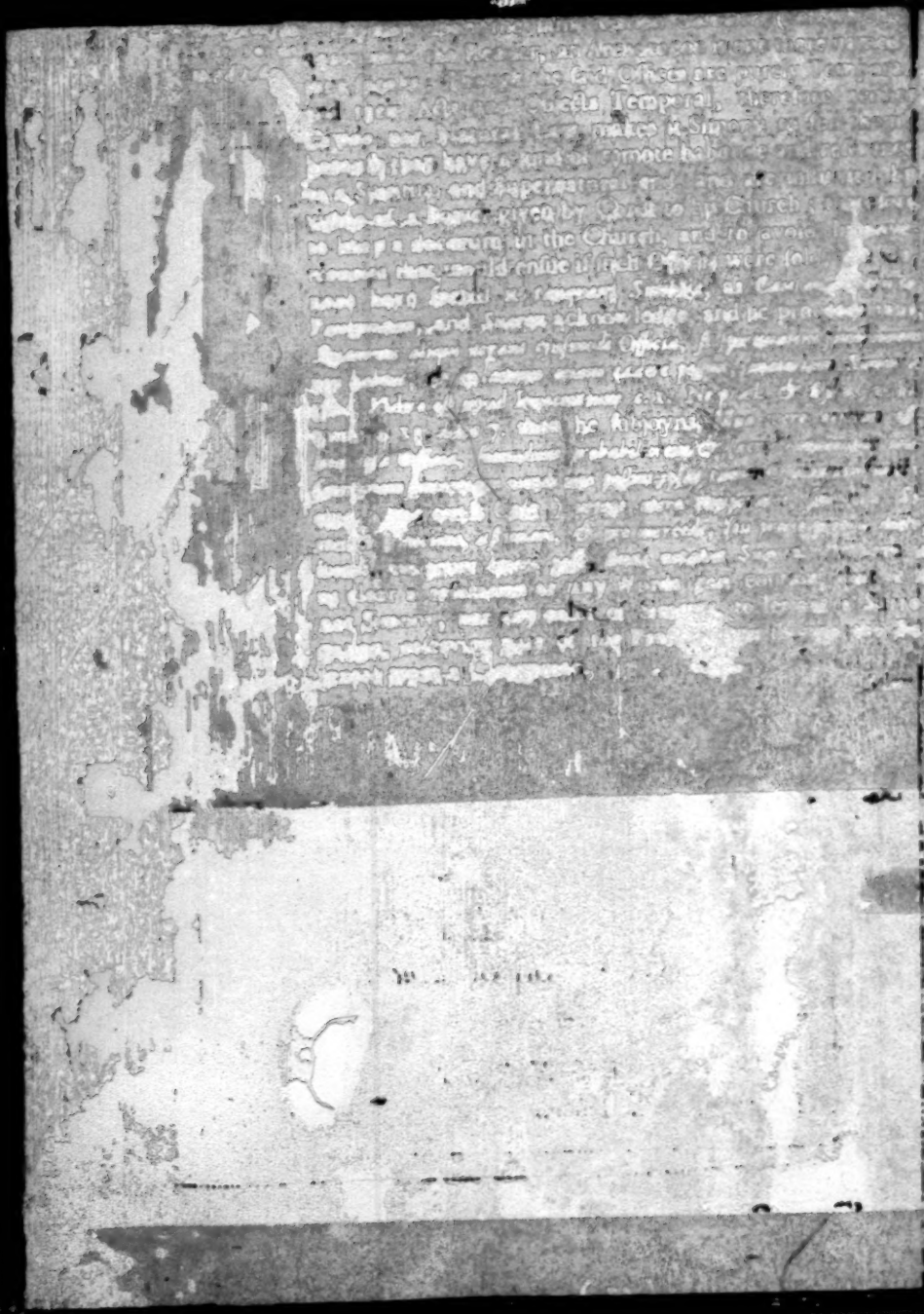

THE PREFACE.

THAT this Cauſe hath been carried on by the united Councels and Intereſts of many of Doctors Commons, needs no proof; the whole management of it declares it, and the Doctor, who is promoter of that Office, owns it; who hath been true to his Truſt, and left nothing unattempted that might advantage his Proſecution, and depreſs his Adverſary; and this for Six Years together, by all the Tricks and Quirks, and Hardſhips that ever were put upon any Man, ſince the Firſt erection of Doctors Commons, to this Day. And all to make a meer Miſtake a great Crime, and by Art and Chicanry to advance it, both in its Nature and Puniſhment, ten fold higher than any Law of Chriſtendom ever yet accounted it.

To effect this, there were frequent Cabals, and ſtanding Counſel for the Promoter to have recourſe to, when his own Skill was deficient, as it hath often been in this Cauſe. Almoſt all the great Miniſters, both in Church and State, have been courted, and gained, to countenance the Proceedings; thoſe eſpecially of the Popiſh Intereſt or Perſwaſion, who have advanced and cheriſhed the Proſecution in ſeveral Inſtances; As by procuring Patents from the King, and Biſhop of Lincoln, to the Promoter and his Aſſigns, by denying Prohibitions, often prayed in the Courts at Weſtminſter, upon Suggeſtion that the Cauſe was cenſured by virtue of Papal Canons, never deviſed, uſed, nor received in

this Nation; by hindering a review, and by contriving to exclude the Constitutions in Lyndwood, *which are the Ecclesiastical Laws of this Nation, from being admitted to rule in this Case, (although there are Three positive and express about this very Matter) because the Punishments they inflict were not sharp enough to answer the ends of the Promoter, and his Associates. Which was done, by some, to make a fair way for the Popish Religion, by admitting First all their Canons; and by others, to introduce an Arbitrary Power over the Fortunes and Reputations of all the Clergy. Some perhaps were led thereunto by meer mistake in the Canons, cited and alledged by the Promoter and his Counsel, which are such that they make all the Clergymen in the World in one Instance or other Simonical, as* Marlerate *observes,* Secundum hanc rationem, vix in toto Papatu, reperietur sacerdos, qui non sit Simoniacus. *And he saith,* Papistæ crimen Simoniæ ad otiosos suos proventus trahunt; *according to the Papal Canons account of Simony, not one in all the Popes Territories can be guiltless, — and they make it serve to bring in a revenue to their Sloth.*

In Acter 5. 21

At the Informations in this Cause, any Word that could be found in the whole Body of the Canon Law was urged, and improved against me, and allowed for as good Law as if it had been at Rome *it self; all the Rist-raff and Trumpery of that Pedlar's-pack was exposed, as if Popery had been then fully Established and Triumphant; and every clause of the Romish Laws had been [illegible] as is* Magna Charta. *And when [illegible] to be considered by Canons devised and made in England, the motion was rejected as impertinent, although it is well known [illegible] a Premunire; [illegible] unaccountable thing, that any*

[illegible]

should receive a Canon made at Lateran *and* Tours, *and reject our own Provincial Constitutions enacted in the Kingdom, and by all the Clergy of it. A thing, I dare say, never before attempted in this Realm; at least in so high a degree as in this Case.*

These Canons then that are said to have censured this Fact for Simony are all Foreign, and a part of those which Luther *caused to be publickly burnt at* Wittemberg; *and whereof whole Books are to this Day rejected in* France *and* Germany, *and all received no where but in the Popes own Territories. Canons whereof one saith,* Fateor multa suppositiria, spuria, fictitia, hiulca, falsa, ex jure civili, vel perperam intellecto, vel fraudulenter applicato, pro tyrannide sua stabiliendâ, distorta, ludicra, ridicula, vesana, nec non, quod rei caput est, impia, blasphema, nefaria, tyrannica, corruptelis repleta, sacrilega, crimen majestatis contra eum, & perduellionis spirantia; Et quis trucis istius lernæ singula capita, vel fando narrare, vel pro dignitate tractare possit? *The Bishop of* Lincoln *gives the Sence of all in his Treatise,* 1679. *The Canon Law that Sink of Forgeries, Impiety and Disloyalty! For I scarce know any Book wherein are more forged Writings, (under good Names sometimes) for bad Purposes, or more impious Doctrines and Positions owned and authorized for Law; —— or any Book which hath more Seditious and Rebellious Principles of Disloyalty. And the Bishop of* Down *and* Connor *calls it, An intollerable heap; Such burdens on Mens Consciences which they can never reckon, never tell over, never know, never understand. —— And it represents the Happiness of Christendom that they are not obliged to such Laws, —— whereof the Cardinal of* Cusa *saith, Infinite Numbers were*

Duck de usu & aut. jur. Jus Belgarum. &c. Edictum Phil. 2. Gerson. Epistolæ Ecclesiasticæ.

Fonteius de jure cant. quatenus recipiendi in Præfat.

Popery its principles and pos. pag. 35.

Duct. dub. l. 3. c. 4. reg. 16.

Alex. 3. Gr. 9. Bon. 8. Clem. 5. John 22.

were rejected when newly made; and were all enacted by the worst Popes, Persons Bloody and Ambitious, Traytors to their Princes, and Butchers of Christendom.

And yet even the severest of these Canons do not Decree this Fact to be Simony, nor place it under that Title, nor punish as Simony, or with more than Monition for the first time, or at most Suspension. So Alexander *the Third commanded the Archbishop of* Canterbury *no otherwise to censure the Archdeacons of* Coventry, *for some sorts of Simony, being not against Divine but Humane Law only, but by admonishing them to desist.*

Extra de pœnis c. licet.

If therefore any shall wonder how this Fact came to be called Simony in the Arches, *and then the Sentence to be confirmed by the Delegates, I shall give a short Answer. That it was never argued on my part in the* Arches, *because the nullities in the Proceedings were so gross on the Promoters part, that my Counsel advised me to rely on them in an Appeal, which I brought; which nullities I must have waved if I had joyned issue; so the Promoter had a Sentence* Secundum Petita, *as he desired, and that was, That it was Simony* in hac Parte. *And for the Delegates when it is known, that half of the were of the* Commons, *and so my Prosecutors, and the very Persons who put the Promoter upon the prosecution; and that either the Promoter or his Agents had privily, and very subtilly, insinuated to the Delegates, a most wicked, and most false and scandalous Report, that I bought my Archdeaconry; telling many particulars and circumstances of it, (every Tittle and Word whereof was a most horrible untruth, and without any shadow or colour, but maliciously and designedly suggested, and devised by themselves to prejudice my Cause) all which was done so clandestinely, that I never heard of it till*

Two

Two Days before the Hearing. I leave all Men to judge what Impressions these things might make, even on good Men, and what effect they might have to make them mistake or byass them in their judgment; which whether pronounced according to the Ecclesiastical Laws or not, I now leave all that will to judge, after I have observed that they differ'd in their Opinions about it; and one so dissatisfied that he went away, and set down the Agreement between Dr. Howell *and my self, upon which the whole is grounded.* Viz.

Feb. 5. 1675.

MEmorandum, *That the Day and Year above Written Dr.* Cawley, *Archdeacon of* Lincoln, *did Consent and Promise, to Make and Constitute Dr.* Howell (*Chancellor of the Dioceſs of* Lincoln) *his General Surrogate, for the Officiality of the Archdeaconry of* Lincoln. *And the said Dr.* Howell, *doth promise to pay unto him 75 Pound* per Annum *out of the Dues and Profits of that Officiality.*

Accordingly I Sealed a Parent (Durante Bene-placito) *to avoid the inconveniencies of concurrency in the Jurisdiction, which he had with me as Commissary to the Bishop; which would be attended with many Grievances, and was complain'd of in the late War, by a Petition to the Parliament. Had I kept it in my own Hands I had made much more of the Fees; but what I did was not for Gain, but to quiet the Jurisdiction and to prevent Quarrels, and Contests, which ensue upon double Citations, and other Process, and are inevitable when the Power is in two Hands.* * *And I only add Dr.* Howell *Executed the Office honestly and uncorruptly as ever Man did; and for his Learning he has Witnesses enough through the Nation;*

* Ubi principale quæſitum non eſt Pecunia non eſt Simonia, ſays Navar. &c.

and

and both of us thought what we did was as justifiable as it was expedient; wherein though we might be deceived yet I believe, I am not, when I think it not Simony, being countenanced by the following Authorities (beside Valentia, &c. not made use of at present) but one of which (Paulus Laymannus) was produced at the Hearing; and by the Reasons herein urged, some whereof were then but either cursorily mentioned or not insisted on for want of Time, or their cogency not duly weighed; the Case also being abstruse and unusual, it having never before, for ought appears, been heard in England.

J. Cawley.

The Case.

An Archdeacon granted to the Chancellor of the Dioceſs, a Layman, a Surrogation of his Juriſdiction on *Durante Bene-placito*, the Archdeacon reſerving to himſelf a Penſion out of the Profit.

Qu. *Whether it be Simony.*

IN the *Roman* Church almoſt every thing is made Criminal; not becauſe they intend to puniſh it, but to gain by it: And the Spiritual Fiſher draws all into his Nets; not to ſeparate the Bad from the Good, but equally to make Merchandiſe of both.

Hence it is, That that Church abounds ſo much in Canons Decrees, in Decretals and Extravagants, Bulls and other Conſtitutions; as if ſhe would even prevent Vice by ſo many Sanctions, that lye, as it were, in ambuſh to intercept it.

However, her Cunning is greater than her Care; and the frequent and continued Violations of thoſe Canons is ſo generally Connived at, that it makes good what hath been long obſerved; Where there are moſt Laws, is the leaſt Reformation.

For in that place of Spiritual Traffick, no Man is Puniſh'd but he who cannot Pay. And 'tis good Law, *Qui non habeat in crumenâ, luet in corpore*: And *Seto* confeſſes it was ſo in his Time, *Nunc vero temporis ſuper his omnibus facilè diſpenſatur*, ſpeaking of Simony and the Puniſhments of it: A 2 De Jur. 9 Art. fine.

Dispensation is seldom denied, if you will come up to the price, and so those Injunctions that else would be intolerable, are become easie.

Upon which bottom it is accountable, why the Canons of that See make above an Hundred things Simony, that were never taken so to be, or so Decreed in the Church of *England*, nor is their Precept or Practice to bring them under that odious Denomination with us; our Church being too sincere to lay Snares for her Sons, designing by all she Enacts to reform, not rob Delinquents.

Vide Redoanum per totum. de Simonia.

So many are the Branches of that Corrupt Tree of Simony amongst the *Romanists*; that were but half of them admitted to be so by us, I may safely affirm, That there is no Clergy Man of what Rank or Degree soever, let him be never so Conscientious and Wary, but hath tasted that forbidden Fruit, in one Instance or other. Forbid indeed, but not as the Fruit in Parad[illegible] was, by God, but by the Serpentine Craft of the Factors for *Rom*.

De Jur. lib. 9. Tit. Simonia. pag. 759.

Soto Contends that his Church hath such a Power, and he knew her pretensions as well as any, being of the Tridentine Conventicle; *Ecclesia potest quempiam actum in vitio Simoniæ constituere, non quod sit propriè Simonia, sed quia pœnâ Simoniæ vindicatur.* And we find but few of that Perswasion, who durst speak what they knew in this Matter, though it would prove a great ease to many Mens Consciences who have thought themselves Guilty of that Crime, and so became uneasie, perhaps all their lives, (though they were Innocent, both in Fact and Intention) deeming that Simony which was not so, and that they had infringed a Divine or Natural Law, when the Crime was only against a Papal Humane Invention, made only to ensnare Mens Consciences, and so get Money to release them; calling that Simony which was not so in its own Nature, but made so to enhance the Dispensation, or the Pardon.

Durand. in Dist. 4. 25 qu. n. 5.

Of this *Durandus*, however, complains, and saith, That all that which the Church of *Rome* call's Simony, if it be not against Divine or Natural Law, is not Simony but Disobedience; His Words are these, *Si ergo sola est humana prohibitio, nè hoc aut illud vendere inobedientia erit non parere, non autem Simonia.* And among others gives this Reason, *Simoni-*

munia ejus rei Spiritualia vendicio; Ecclesia autem non potest rerum naturas mutare, ut faciat Spirituale quod antea non erat. And *Petrus de Arragonia* professes he is of the same Judgment, though he dislikes *Durandus* his Arguments. De Jure & Just. Tit. de Sim.

What they are I shall not now examine, but observe that our Church is of the Opinion of that Great Schoolman and Canonist *Durandus*, Therefore few of those things are censured as Simoniacal by our Laws, either Ecclesiastical or Temporal, or are they counted and reckoned as such, by any Writers upon that Subject since the Reformation, and our Delivery from the Foreign Jurisdiction and Tyranny, in Discipline as well as Doctrine, of that Church, that makes Traffick of her Censures, and Merchandise of Mens Souls.

This is enough to take away the odious Name and Imputation of Simony, from the Fact we Discourse of; viz. That it is no breach of a Divine or Natural Law, but of a Pontifical Constitution only, and *malum prohibitum*, not *prohibitum quia malum*, as the Gloss distinguishes, and so not truly and properly, Simony, but called so *Ratione pœnæ* and might have as well, or better have been called Dissimulation, as the Canon of *Tours* doth, or *ambitus* as the *Roman* Law, or Corruption as the Stat of *Ed.* VI. forbidding the selling some Offices doth, or Heresie as the *Canonist*, call it, or Covetousness as the *Constitutions* do, or Pride as *Navarre* seems to do treating of it largely under that Head; any of those it is, as much as Simony, for which I have the Opinion of one of the best Canonist and Civilians in *England*, among many others, who will have it *Crimen innominatum.* Extra ne præl. vices cap. Quoniam. Navar Tract. 2 Vol. cap. 23. de 7 Pecc. Capital.

Accordingly the Church of *England* esteems it, who is so tender a Mother, that though she is careful to correct Crimes, yet she is too merciful and just to extend them, and is very far her self, whatever some of her mistaken Sons have done, from giving a Name to any Crime that is more Execrable than its Nature. This were to make a Man an Offender by a Word only, which is as bad as for one, if not much worse, and is so contrary to the Rules and Equity of the Christian Religion, that it transgresseth the Common Rules and the Laws of Pagans and Infidels. It is indeed the true practice of the Primitive Barbarity against Christians,

to cloath them with the Skins of Beasts, and then furiously set on them, a sort of Men as greedy and voracious amongst us, as those Tigers and Lions the Innocent were, under that disguise, exposed to amongst them: Only with this difference, that one sort raged against Mens Lives, and these prey upon their Goods. Thus in *Rome* any thing is made Hereſie, that their Estates may be Confiscate to the Papal Treasury, and will it not be as great Iniquity to do the same thing, though in another Instance, and so subject our Fortunes and Reputations to the Interest or Malice of Promoters, who hunt for the sake of the Skin, though they pretend it is (in their own Style) *ne crimina maneant impunita*? But I have some reason to hope, That these Papers may give some Light, if not Conviction, in a Cause never but once Argued or Censured in this Nation; and whereof the Voluminous Decisions of the *Rota*'s throughout all Christendom are wholly silent: Which I shall do in this Method,

1. Shew that it is not Simony by the Pontificial Canons, to grant a Surrogation of the Archidiaconal Jurisdiction to the Chancellor of that Dioceſs, being a Layman (*Durante Bene-placito*) the Archdeacon reserving a Yearly *Cens*, or part out of the Profits to himself.

2. That it is not Simony by the Ecclesiastical Constitutions, Injunctions, or Canons of the Church of *England*. Nor,

3. By the Temporal Statutes or Laws of this Kingdom.

'Tis now confest by the Adversaries to this Case and their Councel, That the Decrees of the Canon Law have nothing to do with the Matter, they Enacting o[illegible]t buying outright Benefices, or buying Orders, and so buying a *Jus Spirituale*, which is Simony; and wherein they make the formality of that Crime to consist.

Lib. 5. Tit. 4. Vices i. e. Jurisdictiones. Glos.

The *Sedes materiæ* therefore is in the Decretals, *Ne prælati vices suas, vel Ecclesias, sub annuo censu concedant.* Where there are Two Canons, both made by Pope *Alex.* III. about this Matter, but especially the last. The First was in the Councel of *Lateran*; *Præterea quoniam quidam in quibusdam partibus sub pretio statuuntur, qui Decani vocantur, & pro certâ pecuniæ*

niæ quantitate, Episcopalem Jurisdictionem exercent; præsenti decreto statuimus, ut qui de cætero hoc præsumpserit, officio suo privetur, & Episcopus conferendi hoc officium potestatem amittat. This Cannon, it seems, was not full enough, for it named none but the Bishops; and being Penal, could not regularly be extended to Archdeacons; therefore, under the same Papacy, the Councel of *Tours* decreed thus. *Quoniam in quibusdam partibus Decani quidam vel Archipresbyteri, ad agendas vices Episcoporum seu Archidiaconorum, & terminandas causas Ecclesiasticas, sub annuo pretio statuuntur; quod ad Sacerdotum gravamen, & subversionem judiciorum, non est dubium redundare, id ulterius fieri prohibemus: Quod si quis de cætero fecerit, removeatur à clero, Episcopus autem, qui hæc justinuerit, & Ecclesiasticam Jurisdictionem sub patitur dissimulatione perverti, districtione Canonicâ percellatur.*

There is Simony, say the Canonists, and the Glos on the Decrees, by a Divine and Natural Law; and another kind by the Pontificial Laws only, and had not been Simony unless those Laws had made it, or called it so; of which latter kind the Casuists and Canonists make selling Ecclesiastical Offices, with the Canonical Title by Institution, *&c.* *And if selling Offices be not *Malum in se*, much less is letting it during Pleasure, the Archdeacon keeping the *Jus Canonicum & Spirituale* to himself.

* Vendere Officia non est contra jus divinum Soto de Jur. cap. De Sim. So Rodoan. de Sim. per totum.

To make which good, I shall, in the first place, take notice of the Custom the Bishops have in many Dioceses to let out their Jurisdictions (among other things) to their Archdeacons, under a Yearly Pension, according to the Ancient Usage of the Bishops of *Lincoln*, a Copy whereof, taken out of the Register, is here inserted. *Præstent Archidiaconi prædicto Episcopo Juramentum obedientiæ & fidelitatis ratione exterioris Jurisdictionis,* &c. *In summis seq. sc.*

Archid.	Lincoln.	100.	*Marc.*	
	Northant.	54*l.*	0*s.*	0*d.*
	Bucks.	20.	0.	0.
	Leicester.	29.	6.	8.
	Bedford.	14.	0.	0.
	Huntingdon.	28.	0	0
	Stow.	20	0.	0.

Extract è novo Registro Compilato 1440

Juris-

Jurisdiction exterior then is an humane Institution, and the letting it out a breach only of a pontificial, or other Ecclesiastical Canon, not any Divine Law; And so the crime is become Ten fold, nay an Hundred fold less than else it had been. For 'tis now indeed only a Sin of disobedience, and not Simony, as *Durandus* hath resolved And upon this account it is, That the Popes have given leave by their Buils to the Bishops to let out their Jurisdictions for a yearly Rent, it being in its own nature but a Transgression of their own Laws, which they may dispense with at pleasure, which they neither could nor durst have done, saith *Soto*, had it been a breach of a Divine Law, and so *malum in se*.

De J[illegible] I[illegible] de [illegible] n. [illegible] 9

It is not then real Simony, nor is called so, or so reputed by the Canon Law, as the Case is now Stated, being to a Layman. When the Decretals of *Alex.* III. before cited, forbid Letting and make it penal, They restrain it to Spiritual Persons, Clerks in Orders, Deans or Archpriests; Neither was it feasible then to let the Exercise of Jurisdictions Ecclesiastical to any other

To let to a Layman, is like Ploughing with an Ox and Ass together, nay they reckon it Sacriledg in them, and it is wholly impracticable, unless they had particular, and express Licence from the Pope, or some Priviledge, or Indult from that See. *Nullum jus Spirituale cadit in Laicum, præter patronatus & jus sepulturæ* saith *Redoanus*. *Et nulla consuetudo potest reddere laicos capaces Spiritualis Jurisdictionis*, saith he again. Laymen can't be capable of Spiritual Jurisdiction, and no custom can make them so: And so *Panormitan*, though the custom be immemorial. So *Joan. Lup.* in his Treatise of the Liberties of the Church. And so *Lyndwood* in an entire constitution throughout, and it is the common Opinion, insomuch that a Layman cannot prescribe for such Offices. And it is an Argument with the Canonists, That if an Ecclesiastical Office is not Spiritual, it cannot be Simony to Let it for that very Reason. *Abbas* upon this Title, *Ne præl. vices*, thus glosses, *Quod Jurisdictio Episcopalis non potest pretio vendi est enim quid Spirituale*; And again, it can't be sold, *Maximè cum Jurisdictio sit Spiritualis*; And again, *Ego hoc intelligo, quando Jurisdictio ista habet aliquid Spiritualitatis annexum, alias judicaretur ut esset temporalis, & non Spiritualis*,

De Sim. pars 2. c 9 n. 4. Id. pars 1. c. 28. n. 8.

In cap. Messan de elect. not. 3 Lup. 9 6. n. 2. ynd.

Red de Sim. pars 2. c. 36. n 5

Not. 1.

Spirituali, licet talis Jurisdictio recipiatur ab Ecclesiastica persona: And in these Cases he calls it, *Turpe Lucrum*, and not Simony, and so doth Pope *Inn.* IV. the greatest Canonist of them all. And the Glos speaks expressly the same thing, *Si aliquid exigat, Simoniam committere videtur, Maximè cum Jurisdictio sit Spiritualis*; So that if it be not Spiritual the Glos grants it to be no Simony.

In Ne præl. vices. Extra Ne præl. vices c. Quoniam v. precio.

If then this Office be such as hath been used to be exercised by Laymen, and not by Clerks, it cannot be Simony to Let it, according to the Laws and constitutions of this Kingdom, because there is nothing Spiritual that passes in the Patent, the Lessee being uncapable of a Spiritual Administration by the Canon Law, and consequently it cannot be an offence against those Canons, which are directed against Spiritual Persons only, as are the Deans and Archpriests mention'd in the Canon of *Tours*.

And so tender is the *Roman* Church in this point, That they counted it throwing sacred things to Dogs, to let a Layman have an Ecclesiastical Jurisdiction: Neither are Laicks permitted so much as to dispute about Religion, under pain of Excommunication, and being guilty of a Mortal Sin, saith *Navar*, Nay, though never so Learned; No not in *Spain* saith he, where the Clergy are not very well qualified to hold Arguments about it themselves.

Lib 5 Tit. de hæret. Consil. 29 n & v. 8.

According to this limitation the Interpreters proceed in their comments on the Canon Law, making it Simony to sell Offices exercised by Clergymen, as *Felinus* saith, who was Auditor of the *Rota*. And the Glos is his Authority, *Alij dicant quod tunc est Simonia emere aliquam Administrationem Ecclesiasticam, cum aliquid Spirituale habet annexum, vel talis est quæ per clericum tantum consuevit exerceri, & ratione Officii*; *Quod magis credo*. Where the Glos rejects the Opinions of those who would make Simony extend to other Circumstances and Persons, and is a Key to open every Ward and difficulty in our Question, and gives the most genuine and rational distinction between buying Orders or Benefices, and buying some Ecclesiastical Offices. None but Clerks can purchase the two first, and they have Benefices *Ratione Officii*, *quatenus* Clerks, but a Layman who hath no Relation.

Fel. in cap. consulere. de Sim. Tit. 3 n. 7. Glos q 3 ad huc. v. qui claudi tostia

Relation to Orders, and hath not ſo much as a capacity of any thing that is Spiritual, unleſs perhaps an Advouſon, as *Lyndwood* ſaith the Engliſh have by ſpeciall priviledge, or of *Jus ſepulturæ*, may have and may exerciſe ſome Eccleſiaſtical Offices or Adminiſtrations, upon which ground its moſt rational that if one be, yet the other ſhould not be eſteemed Simony.

Several other Gloſſes alſo afford us the ſame reſtrictions of Simony, to convince that this is the true notion of it, when the Law ſpeaks cloſely and diſtinctly. *Sed alii non-*

1 Qu. 3. Salvator, v. judicent. *ſta latè extendunt Simoniam, inhærentes conſuetudini generali. Dicunt enim, Quod tunc tantum eſt Simonia in emptâ Adminiſtratione, ſi talis eſt quæ habeat aliquid Spiritualitatis ſibi annexum, alias non.* If there were no other Gloſs, but this alone, to clear the preſent doubt, this were enough, conſidering of how great Authority the Gloſſes are: 'Tis *conſuetudo generalis* the common cuſtom, ſaith *Gratian*, to reſtrain Simony in buying Offices to this point; If the Office can't be exerciſed without a Spiritual Power 'tis Simony, elſe not. Yet to clear it the Gloſs adds in the ſame place, Treating of the very Office of an Archdeacon, amongſt many other mention'd in that Canon called Salvator, *Quidam autem intelligant hoc totum de clericis, in quibus dicitur Simoniacum hujuſmodi Officia emere.* 'Tis Simony for Clerks to buy theſe Eccleſiaſtical Offices; And of Clerks only all that large and ſtrict Canon againſt ſelling and buying them is to be underſtood. By which we have clearly gain'd this point without any poſſibility of reply or contradiction, That the Canon Law eſteems it then only Simony to buy Eccleſiaſtical Juriſdictions, when they are ſold not to Laymen but Men in Orders.

Gloſs. v Subjecto vero.

Redoan. pars 3 c. 23. n. 16. *Redoanus*, who alone about Simony, is thought fit to be inſerted in the *Tractatus illuſtrium*, (except two or three Leaves of *Careffa*) thus concludes about the Offices in the Canon Salvator, by Authority of the Gloſs upon that Canon. Having diſcuſt ſome wild and extravagant notions of Simony in buying the Offices there mention'd, ſpeak more cloſely thus: *Ray, inhærens conſuetudini, probabilius dixit, quando Adminiſtratio habet annexum aliquid Spiritualitatis vel conſuevit exerceri per Clericum ſolum. unde* ſaith *Redoanus Ulde addit quòd Advocatus, Caſtaldus*, (which are Eccleſiaſtical Offices)

Offices) *& judex potest esse Laicus & consequenter nihil habens Spiritualitatis.* So *Summa Sylvestrina* in the same Words and upon the same Authority. And Cardinal *Zabarel* makes an Objection about the Office, which is *Vicedominatus* (not when 'tis taken for the Chancellor, as *Panormitan* doth, in *Ne prælat. vices.*) That it is an Office meerly Laycal, *De quo non cadit Simonia*, (though it be Ecclesiastical) and his solution shews his Opinion, *Quod dicit textus de vicedomino, intellige cum habeat aliquid Spirituale annexum.* F. V. Simonia. Zab. in constitere de Sim.

Gratian proves, That he who buys any thing that is Ecclesiastical, buys also together with it the right of Exercising it, and so Pope *Paschasius* hath decreed *Neutrum invenditum relinquit*: And it is Simony if he gets it by the priviledge of his Orders, for then he is presumed to buy the very Orders also, since they and the Benefice are concomitant, and he becomes capable of one by virtue, only, of the other; *Alio autem tempore, emere non est peccatum*, saith the Gloss. So that these authorities make it evident, That the essence of Simony consists in this, that something is purchas'd by the priviledge of Orders, or to exercise his Orders about: This then excludes those who buy such Offices as we treat of, since they are Laymen. He who takes Money, saith *Aquinas*, for the use of a Spiritual Power, *intelligeretur vendere usum Spiritualis gratiæ*, and therefore it is reputed Simony. But where there is no Spiritual Power, and no Supernatural Grace made of in the Exercise and Administration of the Purchase, the Crime is of another Nature, and comes no nearer Simony than Advowury. 1 Qu. 3. Si quis. 4 Sent. Dist. 25.

Panormitan is of the same mind, as *Redoanus* Collects from him. *Est Simonia, si potestas aut dignitas habeat in se administrationem, & exercitium Spiritualis Jurisdictionis, & Administrationis, quale est absolvere, confiteri sacerdoti & prælato, seu judicis a sententia excommunicationis & sim.* If there be a truly spiritual Power confer'd and used, then it is Simony, not else. In cap. extirpandæ. qui vero de præl. Red. c. 29. n. 19. pars. 1.

Cardinal *de Turrecremata* on *Salvator*, the Canon so often mentioned, saith, the common Opinion is, That if the Offices mentioned there have a Spirituality annext, 'tis Simony to sell them, else not. And he adds so is the Custom, and so saith the *Archidiaconus*; and so the Cardinal saith, that Pars. 2. 1 q. 3. Salvator. In 1 q. hujus quæstionis.

In Ne præl. vices.

Canon is to be understood according to *Inn.* 4. who mentions several Ecclesiastical Offices which is not Simony to Purchase, because they are Temporal.

Vict. Relat. c. de Sim. n. 16.

And *Victorian* saith, He doth find among the Ancients, as *Altissiodorensis* and *Aquinas*, that it is Simony to sell such Offices, and cites the Archdeacon of *Bononia*, affirming so also, If they have not the care of Souls annext.

By all these Authorities and Reasons it is evident, That if the Jurisdiction that is let out under [illegible]arly Payment, hath not concomitant to it a Power of Or[illegible] for the Keys, which renders none capable of them but Clergymen, it is not Simony. To all I shall add the Judgment of Two or Three of the Neotericks, that it may appear that as this hath been the old received Practise and Opinion of the Canon Lawyers, it is so still. The First shall be,

Theol. Moralis l. 6 tr 10 de Sim. c. 6. n. 63.

Layman upon the same Canon *Salvator* (of which, I again mind the Reader, an Archdeacon is one there named) thus speaks; Though the said Offices are purely Temporal, and their Acts and Objects Temporal, therefore neither Divine nor Natural Law makes it Simony to sell them; because they have a kind of remote habitude and reference to a Spiritual and Supernatural end, and are instituted by virtue of a Power given by Christ to his Church; therefore to keep a decorum in the Church, and to avoid Inconveniencies that would ensue if such Offices were sold, the Canons have forbid it *tanquam Simonia*, as *Caietan*, *Victoria*, *Panormitan*, and *Suarez* acknowledge, and he proceeds thus, *Quamvis aliqui negant ejusmodi Officia, si spiritualem functionem non habent, & in laicum etiam cadere possint, materiam Simoniæ esse. Videre est apud Innocentium c. 1. Ne præl. & Syv. v. Simonia q. 13 dicto 7.* then he subjoyns, *Illud vero certum est, licet ipsa Officia, secundum probabiliorem & sacris cannonibus conformiorem sententiam vendi non possint, ipsas tamen Officiorum functiones*, (the exact Case) *utpote mere temporales, sine ullâ Simoniæ suspicione, æstimari, & pro mercede, seu pretio propriè dicto, vendi, vel potius locari posse sicuti notavit Suarez.* Where is as clear a resolution as any Words can contain, that it is not Simony, nor any color of Simony, to let out a Surrogation, reserving part of the Profits, even though the Patentee were a Clergyman.

Martin

Martin Bonacina, Doctor of both Laws, and Count of the Empire, a great Canonist and Casuist, rekons up the species of Simony, and saith, That the Decrees in the Canon *Si quis*, prohibiting selling Ecclesiastical Offices, intends only Spiritual: And proceeds to enquire whether selling the *Functiones*, i. e. a Surrogation or Deputation of an Ecclesiastical Judge, mentioned with many others, in the Canon *Salvator*, be any sort of Simony, at least *malum prohibitum*, and so Ecclesiastical Simony, but concludes negatively; *Quia sunt opera mere corporalia, & pretio æstimabilia, nec jure Ecclesiastico vendi prohibentur, quanquam ipsa Officia vendi prohibeantur.* And in *Qu.* 17. He enquires whether it be Simony, to give Money for Acts of exterior jurisdiction, and denies it; because he who buys it Exercises no Spiritual Jurisdiction. *Ut sic, sed quatenus continet Politicam & Temporalem.* Tract. de Sim. qu. 3. 1 Qu. 3. 1 Qu. 3. salvator.

Lessius saith, *Officia vero quæ per laicos exercere solum vendere simoniacum non est, quanquam turpe esse videatur tale lucrum, præsertim si Officio coniuncta sit Jurisdictio*; and he there speaks of the Offices in the Canon *Salvator*, so frequently here cited. Inst. Moral. part. 3. l. 12. c. 14. in fine.

Here is then the Case, A Jurisdiction granted to a Layman, who could not exercise the Spiritual part of it, if any such had been, because not in Orders; and so there could be no Simony in the Lessor or Lessee, because the Jurisdiction was wholly Temporal, the Object Temporal, the Subject Temporal also.

Wherein that I be more clear and instructive I shall consider, what kind of Power this is that is invested in a Layman by such a Patent.

According to *Bellarmine*, Ecclesiastical Power is either of Order or Jurisdiction, That of Order is to perswade or incite the willing, by the word and Sacraments, instructions and perswasions and is Sacerdotal, the same which all Priests have.

The other is a Power of Jurisdiction, which though *Bellarmine* and others divide into Internal and External, I see no ground for the Dichotomy, and can find nothing Internal but what belongs to Order only, which is *jure divino*; only some part of this Power of Jurisdiction is reserved to Bi-

shops only, and the rest communicable to others, by them or the Law.

If any will be more critical, and find out some Acts of Internal Power besides that of Order, yet that used in Christian Courts and consistories, wherein Men are compelled to their Duties by Process and censures, must be meerly External, and is so acknowledged to be by most Writers, and fully evinced by our own Writers about the Kings Supremacy against *Bellarmine* and *Baron. &c.* Of this sort is the Power delegated by an Archdeacon to a Layman, as Dr. *Cosen* recounts it The Archdeacons Office is to take care the Churches and their utensils be repaired, and to reform excesses in the Clergy, to acquaint the ordinary with what is amiss, and induct Clerks to Benefices; and for jurisdiction it is according to usage To keep Courts of Instance and Office, and grant Wills and Administrations. See In all which there is no Spiritual Act included; And nothing to be seen that requires the use of the Keys, or flows from the Power of Order. But all these mentioned, the Church Wardens or the promoters, or the Court Leet, or a Layman may exercise as well as the Clergy, if they are legally deputed to it, nay, a Woman as *Gerson* speaks, and the Abbesses and Prioresses do at this Day.

Andrews, Bilson, Burhill, Tompson, Carlton, Sanderson, &c. Tab 2

As for Visitations, The Surrogate only sends to the Clergy to meet at such a place where presentments are taken, and excesses enquired after, which are meerly Temporal Acts, though the Persons enquired of be some of them Spiritual: Therefore when *Redemus* and any other Canonists make Visitations (in their large sense and acceptation or abuse rather of the word) Spiritual, it is because the Archdeacon is bound to Preach and give Spiritual Instructions to his Clergy and others, as the pontifical forms for Visitations, of which there are very many extant, do enjoyn, from which part a Layman is excluded.

As for Excommunication and Absolution, it is well known that Laymen do not use them but leave them to the Clergy, and though they are decreed by one, they are pronounced and made valid by the other. And how great complaints there have been in this Nation of the contrary practice is well known, and that the Canons of 40, which shew

shew the sense of the Church though they were not Confirmed, utterly debar Laymen from any such Power. Neither can I hear that at this present any Layman throughout *England* taketh upon him to Excommunicate without one in Orders to assist him; And I am sure if he cannot bind, he cannot loose. *For ejus est solvere cujus est ligare.*

Those censures indeed are Spiritual when used *in foro interno*, binding and loosing the Penitent, upon Confession and Repentance, and so are part of the Sacerdotal Power, perswasive not compulsive; But when exercised *in foro contentioso* they are granted by *Bellarmine* himself, to be Temporal and coactive, and it is amply proved by Bishop *Cardon* in his Book of Jurisdiction, and by Bishop *Andrews* in his *Tortura Torti*; *Potestas Excommunicationis pertinet ad jurisdictionem fori exterioris.* *Marsilius Patavinus* in his Defensor *Pacis* who Writ 1324, is positively for it; *Ab Officio principatus, sive contentiosæ Jurisdictionis, regiminis, seu coactivi judicii cujuslibet in hoc sæculo, Christus seipsum, & Apostolos excluit, & excludere voluit.* Which *Jacobus de Almain* approves, reciting this passage of *Marsilius*.

In margarita Bald. Loco Repert. Innoc. 4. Super Decretal. Excommunicare & suspendere est jurisdictionis, non autem est de cura animarum. Ita no. Host. in [illegible] de elect.

Lib. 5. c. 7. de Rom. pontif. Pag. 41. 48. Pars 2. c. 4. De supr. pot. Laicâ. fol. 39. Lib. 2. c. 1. Cap. 2. p. 12.

The Archbishop of *Spalato* is express *Potestatem Ecclesiæ propriam totam esse merè Spiritualem.* And saith, That St. *Chrysostom*, St. *Ambrose*, *Bernard* and *Ferus*, agree in this, *Ab Ecclesiastico Rectore potestatem omnem imperatoriam, coactivam, executivam auferunt.* Nor can it be otherwise, for if it were *jure divino*, it must rest in themselves, to whom it was imparted, and could not be delegated and invested on others, as Jurisdictions daily are.

I shall trouble the Reader with but Two or Three Authorities more, and one is *Franciscus de platea*, among the *Tractatus illustrium*, *Nota tamen secundum Gul. quod cum pœnæ non sint extendendæ, & ille qui Simoniacè suscipit aliquem ordinem sit suspensus quoad ea quæ sunt ordinis non tamen est suspensus quoad ea quæ sunt jurisdictionis; unde si aliis habeat Jurisdictionem, & tunc habet, & potest suspendere, Excommunicare, & ab Excommunicatione absolvere, & hujusmodi.* *Covaracius* saith the same, and so doth *Navarrus*. The highest sort of Simony is buying Orders, and a Clerk is *ipso facto* suspended for it, yet however, though he be suspended from exercising or using his Orders, he shall, and may exercise Jurisdiction, if he hath any. And it is most certain, and

De interdicto cap. 2. n. 5.

and the *communis opinio*, that no Simony soever shall hinder the convict from exercising his Jurisdiction, as visiting, censuring, reforming, correcting canonically, or keeping Courts, because the Jurisdiction is not by virtue of his Orders, nor is it ruled by virtue of them, being not a Divine but Humane Institution, therefore executing the power of Jurisdiction shall never make him irregular, as *Navar* and *Covarrvias* and *Infinite* besides of the Canonists Observe. Which demonstrates that their Opinion is, that Jurisdiction is not Spiritual, and from any supernatural Power; And so transaction about it cannot be Simoniacal. This is the plain consequence and deduction from that passage of *Platea*, *&c.* Which yet they seldom own in expres terms.

In suo p. 461. For this is the *Palladium* of the Romish Church, to make all they can Spiritual, at least call it so. Of this *Grotius* complained in his Oration at *Amsterdam*, *Restituta est imperii* Romani *dignitas sub aus[illegible]*, *nempe Hierarchiæ & potestatis Spiritualis.* She contents to make every Cause Spiritual, that so she may retain it, and upon that pretence stamps a *Nolimetangere* upon all Matters that have any relation Objective, or Subjective to Religion. This is her *Diana*, and by this Fraud she gets her Livelyhood, and hath enlarged her Phylacteries, and made it Sacriledge for Temporal Princes to incroach upon her; for all she toucheth is Holy, and is not to be devoured by Dogs. By this she hath erected a Monarchy, and in the midst of Christian Kingdoms maintains a Power, greater then she leaves to the Princes themselves; and all by confounding the Ecclesiastical and Civil Power, Temporal and Spiritual, and engrossing both Powers to themselves, of this Father *Paul* gives us a full and excellent account. *Constantine* made a Decree, that if either party litigant (in Temporal Causes) demanded the Episcopal Judgment, the Cause should be immediately remitted him. Here the Tribunal of the Bishops began to be a common pleading place, having execution done by the Ministry of the Magistrate, and to gain the Name of Episcopal Jurisdiction, Episcopal Audience, and such like. The Emperor *Valens* did inlarge it, who 365. gave the Bishops the care over all the Prizes of verdible things. — St. *Augustine* complained how troublesom it was

Hist. of Counc. of Trent. l. 4.

to

to him. — *Arcadius* and *Honorius* reſtrained their Juriſdiction to Cauſes of Religion. — *Juſtinian* aſſigned them the Cauſes of Religion, Eccleſiaſtical faults of the Clergy, and divers voluntary Juriſdictions alſo over the Laity. — The Biſhops became Counſellors to the Princes in the *Weſtern* Empire, and, by the mixture of Spiritual and Temporal Charges, cauſed their Juriſdictions to increaſe exceedingly. He ſhews largely how they increas'd their Power over the Clergy and Laity, pretending the Cauſe was Eccleſiaſtical or mixt, and ſo leaving nothing to the Secular, appropriated all to themſelves; — making all devolve to themſelves, if the Magiſtrate will not, or neglect to do juſtice. This might be tolerable — but not ſtaying here, they added, that neither the Magiſtrate, nor the Prince himſelf, can meddle in any of theſe Cauſes, which the Clergy had appropriated, becauſe Spiritual; and of Spiritual things the Laicks are uncapable — Though adopted by the Heavenly Father, called Sons of God, Brothers of Chriſt, partakers of the Kingdom of Heaven, made worthy of Divine Grace, of Baptiſm, and the Communion of the Fleſh of Chriſt. What other Spiritual things are there beſides theſe? — 'Tis falſe that cauſes appropriated to the Epiſcopal Judicature, are Spiritual. For all are either delicts or contracts, which conſidering the qualities, given by the Holy Scripture to Spiritual things, are as far from being ſuch, as Earth is from Heaven.

Upon the Spiritual Power given by Chriſt to the Church to bind and looſe, and upon the Inſtitution of St. *Paul* to compoſe contentions between Chriſtians, without going to the Tribunal of Infidels, in much time, and by many degrees a temporal Tribunal hath been built, more remarkable than ever was any in the World, and in the midſt of every civil Government, another Inſtituted, not depending on the publick; which is ſuch a kind of Common-wealth, as not one, of as many as have Written of Governments, would have imagined could ſubſiſt, *&c.* Thus far that Incomparable Hiſtorian *Carolus Molinæus* in his Commentary upon the Edict of *Hen.* 2. againſt the Breves and abuſes of the Court of *Rome*, ſaith, all Divines exclaim againſt the Canoniſts for confounding Carnal and Temporal with Spi-

Pag. 158.

ritual,

ritual, and by a pretence of dependency and connexion making them all one, and cites *Gerſon*, complaining how much the Church hath ſuffered by it, more than can be declared For when ye take off the vizor and ſpeak properly, Spiritual things are Gods Grace, his Word and the virtue of it, and the Sacraments are Spiritual, not eſſentially, but caſually or rather inſtrumentally: So that Tythes and Church Revennes are Temporal, not Spiritual, but devoted to Spiritual Adminiſtrations. And *Hugo de Sto Victore* 300 Years before hath ſaid as much.

Lib. 2 de Sacramentis.

However ſo Zealous are the panders of *Rome*, to maintain her Grandeur ſo falſly gotten, that many of their Canoniſts make the very Office of Emperor, King, ——— Præfect of a City, and all Civil Magiſtrates to have a Spiritual Power, and it ſhall be Simony to give Mony for them, or any depending on them. *Quia omnis poteſtas eſt a Deo* ſaith *Hoſtienſis* Nor can a Man buy ſo much as the Clerk of the Markets-place without that impuration. And *Gratian* makes it Simony to give mony for the Porters place in a Church and proves it from *Mal.* 1. 10. Who is there even among ye that would ſhut the Doors for nought? or the Sutlers or Butlers, and the Gloſs adds, the Bell-ringer or any other Office, (*cujuſcunque alterius rei*) let us ſuppoſe the Candle lighter and the Chimney Sweeper, and the Trencher Scraper they are all Spiritual, in the ſame ſenſe we commonly call a Tythe Pig a Spiritual Pig, though he be the worſt of the whole litter, thus have theſe Monks play'd with Holy things, and expoſed them to deriſion, and taken off the eſteem and reverence all Mankind are ready to pay to things truly and really Spiritual, by obtruding ſuch falſe liſts of Spirituals on the World, to keep up an uſurped Juriſdiction over things Temporal.

In de præl. vices.

Qu 3 Sed ad huc

If we have gain'd this point, That the exterior Juriſdiction of an Archdeacon is not Spiritual, we may conclude it not Simony to let it out, reſerving part of the Profits. Againſt which nothing will lye, except the common definition of Simony; *Studioſa voluntas emendi vel vendendi Spiritualia, vel Spiritualibus annexa.* To which a ſhort Reply will ſuffice, and that is *Aquinas* his, and *Caietans* upon him, who ſhew, that this definition faile when the *Annexa Spiritualibus*

22 Qu. 100. Art. 4.

tualibus are not joyn'd to the Spiritual as that they muſt neceſſarily be bought and ſold together. Anciently the Canons ſay, Ordination and Inſtitution were the ſame; as *Petrus de Marca*, Archbiſhop of *Paris*, affirms in his *Concordia Sacerdotii & Imperii*, and makes that the ground of the Eleventh Canon of the Councel of *Chalcedon*. His words are theſe, *Cum in illâ ætate ordinatio ſive ordinatio, complecteretur electionem perſonæ, atque illius conſecrationem per impoſitionem manuum, ipſamque in Eccleſiâ certâ inſtitutionem.* Here then, as he deduces, is a neceſſary connexion, and the Spiritual can't be ſeparated from the Temporal; *quare omnia comprehendebantur damnatione illâ quæ gratiam commercio exponebat.* The Benefice and Orders went together, and he who paid for one was a Purchaſer of the other alſo. Of ſuch things the Canoniſts ſay, they are *annexa concomitanter*, He who buys one cannot leave the other unbought, and it is real Simony. But when things are annex'd to a Spiritual, only Antecedently or Conſequently, ſo as they may be ſeparate and one bought without the other, many times it is not Simony to give Money for them: Otherwiſe neither Tythes could be Let, nor Glebe, nor Lands, nor Houſes, nor the Obventions of a Juriſdiction, nor could broken Conſecrated Veſſels be ſold, nor Advouſons, nor Burying places. Therefore alſo *Aquinas* ſaith, Things may be annex'd to Spirituals Two ways, either as depending on Spirituals, as a Benefice which none can have but a Clerk, and ſuch cannot be ſold. 16 Q. 7 Determinus 18 c. 13 p 5

Secondly, As they are appointed, and ſet a part to Spiritual Uſes, and ſuch may be ſold: Which ſtrengthens, as well as gives light, to this whole Tract; If a Juriſdiction were ſo annex'd to any Spiritual Office, that it could not be ſeparated from it, but that Supernatural, Spiritual Power, is requiſite to the exerciſe of it, then it would be Simony, becauſe it muſt be ſuppoſed the Power is bought alſo, (which is true Simony) but is nothing of, or to the preſent Caſe; where the Juriſdiction that is let is Temporal, uſed by a Temporal Perſon, and about Temporal Objects. And accordingly the Canons of *Lateran* and *Tours*, prohibiting the letting out Juriſdictions of Biſhops, or Archdeacons ſpeak of letting to Spiritual Perſons, Deans and Archpresbyters,

presbyters, but of letting to Laymen there is not any Prohibition in the Canon Law. And those Canons being Penal, the more Penal they are, the more they are to be restrain'd, and no extension shall be allowed to them for Punishment, but for Favor only, as all know that know any thing either of the Canon, or the Civil Law. *Lyndwood* is express, that *Statutum pœnale non excedit limitationem in eo positam.* And so *Navar, Pœnæ non sunt extendendæ ad alium casum ex similitudine rationis, imò nec ex identitate rationis omnimodâ.* So saith *Andræas*, in the Gloss, If the Laws be *Pœnal suum scriptum casum non excedit.* And in *Pœnis non arguimus ad similia, quia pœnæ non excedunt proprium casum*, saith the Gloss on one of the Rules of the Laws. And once more I shall cite *Lyndwood* for this, and so have done, *Regulare est quod Statutum maximè pœnam loquens de personâ verâ, non extenditur ad personam representatam.* The Persons spoken of in the Canons, being Deans and Archpresbyters; If a Jurisdiction be not let to one of them, by all these Authorities the Lessor can't be within the Purview of it, but infinitely stronger is it, that these mentioned being all Clerks in Orders, Laymen out of Orders shall not be included, but they who let to them absolved.

Lynd. de vita & hon. cler. c. exterior v. pendulis.

Lib. 3. de Præb. Consil. 13. n. 3. & 4. Extra in 6. de temp. ordin. c. 1. v. Italiæ. M. 6. de pœnis v. pœnis. Lynd. de locat. & conduct. c. ut verè v. certis personis.

For, though [illegible] a Horse, yet the same Statute canno[illegible] Mule, much less an Ass, though all are B[illegible] Burden, and the first a part of him; though the Immora[illegible] Crime in stealing either of them be not at all differ[illegible]

To all which I sh[illegible] one thing more, That this Crime, whatever it is yet is not under the title of Simony in the Canon Law, but under the title immediately following, which shews what Notion the Compilers of the Canon Law had of it, and that they took it not to be Simony, though it had been exercised by a Clerk, at least not such a Simony as the former title treated of, in the rigorous and strict signification of the Word, but in a large extentisive, abusive signification only, as they may call any Crime they please by that Name, as *Soto* before cited to that purpose, hath observed; though indeed the Canons never call this so, in any sense whatsoever, but clearly intend it for another sort of Crime, by placing it under another sort of Head, which I may

I may very rationally infer, considering the accuracy and exactneſs, uſed by the Compilers, in ranging every thing under its proper Head, by that ſhewing to us the true nature, and formal difference of every thing there treated of. And this is ſo true and material, that Pope *Greg.* XIII. in his Breve before the Body of the Canon Law, ſaith, *Quæ perperam poſita erant, ſuis locis reſtituta*, &c. every thing is now reſtored to its proper place, to which place this Crime is not reſtored, if it be Simony, which muſt argue either Neglect, or Unskilfulneſs in the Compilers, Crimes not to be objected where Popes, and the beſt Canoniſt in the World are ſo far concerned. And, indeed, who can believe that in Forty ſix Chapters, which make up the Title Simony in the Decretals, this ſhould not have been inſerted, if it had belonged to that Claſſis, rather than have crept in under the next Title of *Ne præl. vices*, where there are in all but Four Chapters; and that which is treated of in the laſt, no Man ever called Simony; *viz.* Letting the Tythes to Farm for Seven Years, which yet muſt be Simony, if the Gloſs ſaith true, which would make it a kind, or a ſort of Simony, ſomething like it, though not it. *Altera ſpecies Simoniæ*, That is ſomething the Canoniſts call ſo, though it be not ſo. For as the Church of *Rome* Uſurps a Power to make every thing Lawful, if ſhe pleaſe, by her Diſpenſing Power, which began at *Rome*, as *Matth. Paris* ſaith, though never ſo flagitious; ſo doth ſhe, on the contrary, pretend the ſame Power to brand every Action with an infamous Name, though it be in it ſelf never ſo Innocent and Indifferent.

In this Caſe, It is Lawful ſay her Canoniſts for a Biſhops, or an Archdeacons Chancellor or Official to put in a Surrogate, it may be a Curate, or a Vicar-choral, never Educated to the Law, and give him 10 lb a Year, or but a Groat for an Oath, and no other Salary, as many have done who have theſe Juriſdictions, and the Chancellors and Officials take all the reſt; allowing not a full Scandalous Tenth of the Profits to the Surrogate. But it ſhall not be Lawful for an Archdeacon to make the Chancellor of the Dioceſs, or any other well Qualified Learned Man, his Surrogate, the Archdeacon reſerving to himſelf, perhaps, not neer half of

the Profits, and ſo allowing the Surrogate a plentiful, and honorable Sallary. Now let any Man Judge which of theſe two will be tempted to Oppreſſion and Extortion, he that exccutes the Office for 10 lb a Year, or he who hath 80 or an 100 lb. But ſtill there is a Quirk and Nicety in the Law, which improved by the Chicanry of the Practiſers, and countenanced, and even promoted by a whole Com munity of the profeſſion, can make Black White, and White Black, and find error where there is no fault, and make that Criminal which moſt furthered the adminiſtration of Juſtice; whereas their own ſcandalous, and ſcanty, both Salaries and Surrogates, ſhall never be called into queſtion. This is the true Caſe I now treat of; and it is, and hath been confeſſed at the hearing of this Cauſe, by the moſt violent in it, That there is really, and indeed no difference at all between the Archdeacons giving a Sallary to a Surrogate, or his reſerving part to himſelf, only in one caſe the Archdeacon receives the Profits and divides them; and in the other caſe the Surrogate doth it. The thing is all one, and comes to all one, and either way the Archdeacon may have what he will himſelf, and let his Surrogate have what part he aſſigns him. The Surrogate in either caſe may be tempted to Extortion of Fees, becauſe he hath not the whole, yet that is the only reaſon in the Canons why this we write of is forbid, and muſt be a very weak one, ſince they permit what is as pernitious, or more than what they prohibit.

2. The Second head is, That it is not Simony by the Eccleſiaſtical Conſtitutions, Injunctions, or Canons of the Church of *England*.

A great part of which were Compiled, and Gloſſed on by *Lyndwood*, who follows the Order of the Pontifical Decretals, making in all Five Books; in the the laſt whereof is a Title of the ſame Name, and in the ſame place as in the Decretals, called *Ne prælati vices*, wherein this Crime is treated of. So that the Title of Simony, which juſt preceds this, hath no more to do with it than any other Title hath; but in *Lyndwood*, as before in the Decretals, it is under another Title, diſtinct from that of Simony, which ſtrongly argues it to be a diſtinct Crime.

Long

Long before *Lyndwood*, in the Reign of *Hen.* the Firſt, a Councel was held under Archbiſhop *Anſelm*, whoſe Second Canon is againſt Simony, and the Third is againſt letting Juriſdictions to Farm, but that Canon calls it by no ſuch Name as Simony, no more than ranks it under that head. Matt. Pariſ. & Spelman 2 vol. Concil. in initio.

In the Abortive Canons of *Edw.* the Sixth, there is not a Word about it, though very much about Chancellors, *&c* and their Juriſdictions.

The Canons of King *James* 1603, injoyns an Oath againſt Simony at Inſtitution to Benefices, and the Canon is under the general head, Intituled, Miniſters their Ordination, Function and Charge. The whole Canon concerns Benefices which require a Canonical Title and Inſtitution, which is the very Definition of a Benefice in the *Regulæ juris*, *Beneficium Eccleſiaſticum licitè acquiri non poteſt ſinè inſtitutione Canonicâ.* Can. 40. Reg. juris in 6.

And *Lyndwood* explains what a Benefice is, *Intelligo comunem appellationem Beneficii, Dignitates, perſonales præbendas, & Eccleſias omnes, & alia quæcunque cum curâ & ſine curâ, quæ cum titulo habentur, & Inſtitutione Canonicâ.* Neither is the Oath againſt Simony, recitd in that 40 Canon, Adminiſtred by any, who underſtands his Duty, to Officials or Commiſſaries, or any who act by Deputation. But there is another injoyned, in Can. 127, 128, for theſe Officers, and indeed for all Judges Eccleſiaſtical and their Surrogates; and conſiſts of but Two Canons. 1. The Quality and Oath of Judges. 2. The Quality of Surrogates. In the Firſt, whereof they are injoyned to take the Oath of Supremacy, and ſubſcribe the 39 Articles, and of dealing Juſtly and Uprightly in their Offices; all which the Surrogates are equally obliged to by Can. 128. And this is all they are required to take: So that if any other Oath be Adminiſtred to them, they may refuſe it, and if they do take any, it is voluntary, and they do more than is neceſſary, and the impoſer incurs a Premunire, excerciſing Juriſdiction without Lawful Authority. De vita & hon. cler. c. hoc ſacro v. beneficiis.

In the Repertorium, which *Badius Aſcenſius* made to *Lyndwood*, many ſorts of Simony are recounted, and even all that *Badius* could collect out of the Conſtitutions, but this

is not there counted for one, nor in his *Tabula Rubricarum.*

What the Church of *England* thought of it, we may judge by the Canons 1640, which declare her ſenſe, though the Canons are not genuine and binding, 'Tis decreed in Can. 11. That no reward ſhall be taken for any Chancellors, Commiſſaries, or Officials place, under the heavieſt cenſures of the Church: And that is Excommunition; but if it be true and real Simony, againſt Divine or Natural Law, it were Deprivation. Now although the Offence mentioned in that Canon be of a higher Nature, and far more odious than letting out a Juriſdiction to Farm, or reſerving part of the Profit to the Leſſor, yet it is not Deprivation, for Deprivation is no cenſure at all, and ſo cannot be meant in that Canon. For all the Canoniſts agree, and it is *communis opinio*, founded on the Decretal of *Inn.* III. That theſe things only and no more are called cenſures, *viz.* Interdict, Excommunication and Suſpenſion. *Quærenti quid per cenſuram Eccleſiaſticam debeat intelligi*, Reſp. *Quod per eam, non ſolum Interdicti, ſed ſuſp. & Excom. ſententia valet intelligi.*

Extra de verb. ſign. c. quærenti.

Videſis Saynum de cenſuris.

Dr. *Coſens* (to whom for his Skill in the Canon Laws, every Man to this Day pays a veneration, and who was Dean of the Arches) in his Tables, reckons no Simony but *In Ordine ſive gradu, & Beneficio*, in Orders and Benefice; thereby excluding this Fact. Nor is there any Engliſh Author extant, though ſome have writ large Treatiſes of this Subject, and others Chapters of it, who ever mention this as Simony, which both they and Dr. *Coſens* muſt needs have taken notice of, had they eſteemed it any ſpecies of it in the account of this Church.

Tab. 7.

Burton, Melford, Hughs, Degg, Godolphin.

It is alſo evident by the Puniſhments inflicted on it by the Conſtitutions of our Church to be found in *Lyndwood's* Collections, that it is not judged Simony. For in the Provincial Conſtitution of Archbiſhop *Langton*, the Puniſhment is Suſpenſion only, *ab Officio*, for a Year.

Lynd. Nè præl. vices lib. 5.

In the Legantine Conſtitution of *Otho* there is no Penalty annext, and ſo the Puniſhment can be but Admonition for the firſt time.

Cap. Eccleſias.

In the Conſtitution of Cardinal *Othobone*, the puniſhment is to pay a third part of what the Leſſor ſhall have received,

Cap. Indign.

to

to the Fabrick of the Metropolitical Church of *Canterbury*. Whereas if it were Simony, it is notorious that the whole ought to be refunded, by all the Canons of Christendom: Which I shall not trouble my self to prove, since no Canonist denies it, for he who purchases Simonically buys nothing, he hath no Title to the profits, and therefore is never to be dispensed with, till he hath restored the whole. These Arguments I do but propound, because I would be brief, but if any Man of Judgment will consider them, he will find them solid, and the weakest of them of great weight to determine this Case. For if all the Clergy of *England*, *Scotland*, *Ireland*, and *Wales*, and the Cardinal Legate, who presided in the last Synod, and who was himself also afterwards Pope, understood as much as the least Canonist in *Doctors Commons* pretends to, they must have imposed another sort of punishment upon this crime, if it had been Simony, and not have let it escaped with so slight a censure, as only paying to the Cathedrial of *Canterbury*, a third part of what was received I shall only add, That the Provincial Constitution saith, it was a frequent thing in those Days to let Jurisdictions to Farm, and so frequent that the Cardinal and Synod were afraid to make Canons against it, least they should insnare Mens Consciences, yet in all the Realm is not to be found any sentence ever calling it Simony, or punishing it as such. And if they had reputed it Simony, there needed no new Decrees about it to punish it, for the Canon Laws might have done that, without the help of these new Constitutions, which therefore we may conclude counted it another crime, because they give it another punishment. It is therefore not material what an interested partial promoter, or his abetters would make of it, since it is so clearly resolved in that, and other Constitutions, in most August and venerable Councels of all the Prelates of three Kingdoms, and by Legatine Authority, not to be Simony, as appears by the Sanctions of their Canons.

3. It is not Simony by the Statutes of this Realm There is only one Statute that takes any notice of letting to Farm Jurisdictions; And one more that gives account what the Temporal Laws of this Land think to be Simony; The

first

firſt Statute is, that of 5, 6 *Ed.* 6. 16. Entituled, The penalty for buying and ſelling ſome ſort of Offices. And this is made for the avoiding corruption, as the firſt Clauſe ſpeaks. That letting out a Juriſdiction is comprehended in the Statute is agreed by the Judges, but the Statute calleth the fact Corruption, not Simony.

The other is 31 *Eliz.* 6. Againſt taking reward for Election of Schollars, *&c.* and for preſentation of Benefices. By which Title I may Collect, this is not included that I Treat about; And indeed no Man ever ſaid it was, therefore I ſhall not ſpend time about it. For the Statute concerns only buying Orders and Benefices, and corrupt reſignations.

And indeed ſo far are the Temporal Laws of the Realm, from making this fact to be Simony, that whatever Name had been given it by the Pontificial Canons, or by thoſe of the Church of *England*, yet the Laws of the Land have Abſolved it, and acquitted it from being that ſort of crime.

I ſhall at preſent avoid the Queſtion, whether any thing can be Simony by the Laws of this Land, that is not Declared ſo in that Statute of Queen *Eliz.* which is made for the avoiding Simony and corruption, as the fourth Paragraph Declares; Although I know 'tis the Opinion of moſt of the Learned Lawyers, who are poſitive in it, and maintain it by very ſtrong Arguments, Reaſons, and Authority. But it is a matter too long to be diſcuſt here, and out of my Province; and more than is neceſſary to my Subject in Hand.

It ſhall be ſufficient to ſhew, that whatſoever the Canons about this matter had been before the Statutes of *H.* 8. and Reformation of Religion that ſoon followed, and the Statutes thereupon, the nature of the crime, and the whole current of the Laws about it are altered: So that had this Office been given to a Clerk, and not to a Layman, yet, as the Laws of *England* now are, it could not have been Simony, although the Leſſee had exerciſed by virtue of his Deputation, all thoſe Functions, and that Juriſdiction which the Ancient Canons called Spiritual.

For by many Statues made in the Reigns of *H.* 8. *Ed.* 6. and the Queen, thoſe Powers and Juriſdictions are made Temporal, and ſo no longer of that nature, which could

render the Contract about them liable to the imputation of Simony; which cannot be committed but when that which is ſold is Spiritual.

The 26 *H.* 8. 1. Gives the Kings of this Realm full Power and Authority, to Viſit, Redreſs, Repreſs, Reform, Order, Correct, Reſtrain, and amend all ſuch Errors, Hereſies, Abuſes, Offences, Contempts, and Enormities whatſoever they be, which by any manner of Spiritual Authority, or Juriſdiction, ought, or may, lawfully be Reformed, Repreſſed, Ordered, Redreſſed, Corrected, Reſtrained, or Amended, —— any Uſage, Cuſtom, Foreign Laws, Foreign Authority, Preſcription, — to the contrary notwithſtanding.

Alſo the 37 *H.* 8. 17. Declares the ſame Power to be in the King, and to exerciſe all manner of Juriſdictions, commonly called, Eccleſiaſtical Juriſdiction, — And that the Power the Pope claimeth, is directly repugnant to your Majeſty of Supream Head of the Church, and Prerogative Royal, your Grace being a Layman, — and that the Archbiſhops, Biſhops, Archdeacons, *&c.* have no manner of Juriſdiction Eccleſiaſtical, but by under, and from your Royal Majeſty, — Some evil diſpoſed Perſons little regard the Proceedings and cenſures Eccleſiaſtical, made by your Highneſs and Vicegerent, Officials, Commiſſaries, Judges, and Viſitors, being alſo Lay and Married Men, and think them of little or none effect. Foraſmuch as your Majeſty — hath all Power by Scripture to hear and determine all manner of Cauſes Eccleſiaſtical, and correct Vice and Sin whatſoever; and to all ſuch Perſons as your Majeſty ſhall appoint thereunto, —— Be it Enacted, That Doctors of Law may lawfully execute and exerciſe all manner of Juriſdiction Eccleſiaſtical, and all cenſures and coertions, —— Albeit they be Lay or Married Men.

1 *Ed.* 6. 2. Affirms all Authority of Juriſdiction Spiritual and Temporal, is derived and deducted from the King's Majeſty, —— And all Courts Eccleſiaſtical are kept by no other Power or Authority, either Foreign or within the Realm, but by the Authority of his moſt Excellent Majeſty.

All which Statutes, among many more, were repealed by Queen *Mary*, being contrary to the Doctrine and Intereſt of the Romiſh Church, who holds for the moſt part all theſe Juriſdictions

1, 2 Phil. & Mariæ. 8. Revived by Queen Eliz.

risdictions to be of Divine Right, and their censures to be Sacerdotal, and the Power Ecclesiastical to be, *Ex sacrorum Canonum dispositione*, as the Popish Clergy speak in their submission to Cardinal *Pool*. But the Reformed Protestants speak quite otherwise, as Dr. *Sanderson* doth, who saith of the Exterior Jurisdiction, it is not from God but from the King, wholly and entirely from him, as the sole Fountain of all exterior Jurisdiction, Spiritual or Temporal, and consequently not of Divine Right. So saith that Bishop; for indeed if these Jurisdictions were of Divine Right, they could not be deputed to others, but the exercise must be limited to the Persons alone in whom such a right is inherent. One Statute therefore saith well They are called Spiritual, not that they are so; it is Popery to Affirm it, and a virtual denying the Kings Supremacy, and renouncing the Oath of it, and a Lopping from the Crown one of the principal Branches of its Prerogative; prehemineence in all Causes; Which the King can never have, if exterior Jurisdiction be Spiritual, from God and the Pope, not from the Crown. The Book (of an *Anonymous* Author) called, Episcopal Inheritance, saith, 'tis a Popish Tenet to Affirm the Ecclesiastical Jurisdiction to be distinct from the Civil, which *Bellarmine* asserts to set the Pope above Kings, and to exempt the Clergy from the secular Powers.

Episcopacy not prejudicial, &c. Pag. 32.

25 H. 8. 21.

1 Eliz. 1.

In Queen *Elizabeth's* Reign, this Power is Affirmed to be in the Crown, and 'tis Enacted, That all Spiritual or Ecclesiastical Power or Authority, for the Visitation of the Ecclesiastical State, &c. Be united and annexed for ever to the Imperial Crown of this Realm.

But the Canons Affirm it to be in the Pope as a Spiritual Head, and have therefore called it a Spiritual Power, which being now by these Statutes, reduced to its true Original, must be no longer Spiritual but Temporal, for the King hath it as a Layman, saith the 37 *H.* 8. 17. And may invest Laymen with it, who are no ways capable to give or receive it if it were Spiritual. So that wherever it was heretofore, when it came from *Rome*, it is now Temporal, and a part of the Kings Temporal Jurisdiction, as Impropriate Parsonages and Vicarages become Temporal Things

Things and Lay-fees, now they are appropriate to Laymen, which before were Eccleſiaſtical and Spiritual: And ſo the nature of ſuch Juriſdictions, as of the Benefices, is altered with the alteration of the Tenure. So it would have been Simony to have ſold the Six and the Sixty Clerks places in Chancery, when they were all Clergy Men, or the Advocates and Proctors of the Commons, when they were all bound to be Clerks (which made *Ariſſiodorenſis* and *Aquinas* ſay, it was Simony for the Advocate to take Fees for pleading) but now they are all Laymen, there is no colour for ſuch a cenſure.

There is yet remaining one, and a very ſtrong Argument, that letting a Juriſdiction cannot be Simony by the Laws of *England*, and it is this. Neither that Canon of *Tours*, nor that of *Lateran*, in the body of the Canon Law, nor any Gloſs nor Commentator upon them is Law with us in *England*. 'Tis true that thoſe Canons do not call it Simony, nor puniſh it as Simony, but if they did, I Affirm, they are nothing to the Caſe, being not Law in our Church, and ſo concerns us no more than the Laws of *Confucius*, or *Japan*. 'Tis almoſt unaccountable what Intereſt thoſe Men would ſerve, who have contended earneſtly that all the Popes Laws are in force with us. I know none but that of *Doctors Commons*, who, if they had ſo large a Field to exputiate in, would have all Mens Eſtates and Reputations in their own Power; But it is moſt certain, that no part of the Canon Law is in force in *England*, but what hath been received and uſed here, not as the Popes Law, but as made part of the Kings Eccleſiaſtical Laws by cuſtom, uſage and conſent; Upon which conditions the Laws of all *Rome* might have been ours, as well as thoſe only of *Oleron*. This is plain by our Statutes, and it is a Premunire to defend and maintain thoſe Canons; or, that ſhall directly or indirectly put in ure, or execute any thing for the Exolling, Advancing, ſetting forth, maintenance or defence of any ſuch pretended, or uſurped Juriſdiction, Power, Preheminence, or Authority, or any part thereof. The Second Offence is Premunire by the Statute of that Queen. Now there cannot be an higher Offence againſt both the Statutes cited in the Margen, than introducing Foreign Ca-

In Nè prætermittas.

Dr. Heylin, &c.

25 H. 8. 21. 1 Eliz. 1.

nons, and judging the Cauſes of the King's Subjects by them; utterly refuſing to proceed by Canons made and uſed within the Realm, as hath been done in this Cauſe.

Page 32. Mr. *Bagſhaw*, in his Speech concerning the Premunire, ſaith, a Premunire was againſt Cardinal *Wolſey*, and he was attainted in it, though he had the King's Commiſſion for what he did; Mich. 21. Hen. 8. Banc. Roy. *Quia ipſe intendebat antiquiſſimas Angliæ leges ſubvertere & enervare, univerſumque regnum Angliæ legibus civilibus, & earundem legum Canonibus, in perpetuum ſubjugare.* And for this he forfeited all his Goods and Chattels to the King; *White-Hall*, *Hampton-Court*, *Chriſt Church*, &c. If it were not for theſe Statutes of Premunire, there would be no quiet to the King's Subjects, as Chancellor *Audely* told *Gardner* Biſhop of *Winton*. Id. Page 40

Thoſe Laws of the Pope we have no more to do with than his Religion, which yet by a Corrupt Intereſt have been partly maintained, by thoſe perhaps, who hope his Power may ſometime return where his Canons ſo much prevail.

It is indeed an unaccountable Boldneſs for any Judge to give ſentence in a Cauſe upon Popiſh Canons, never uſed or put in practiſe in *England*, as hath been done in this Caſe; but it muſt be remembred it was done when Popery began to rule us, and he was moſt countenanced who could moſt cunningly introduce it one, and that a very ſubtle Method, being to bring in force again all the Pontificial Canons, which the Reformation had Abdicated For this reaſon all the Popiſh Judges, and thoſe that were eminently Popiſhly affected, would never conſent to a Prohibition upon this ſuggeſtion, though it was thrice attempted, That it was no Simony by any Law or Canon that ever was uſed, or in force in *England*, though the ſuggeſtion be moſt certain true and relevant. That it is true, I affirm, becauſe there never was any ſuch Cauſe before heard in *England*, nor any Sentence in it, no nor is there any deciſion of this Cauſe to be found in any of the numerous Books of all Chriſtendom. There is no inſtance before, neither in *England* nor in the whole World of any hearing wherein it hath been judicially pronounced Simony. Therefore the ſuggeſtion muſt be relevant, as may be ſeen by the Statutes before

Though they granted a Prohibition upon another ſuggeſtion.

before cited; for those Canons on which the Sentence is grounded, are no Laws in *England*. Suppose a Man was Libelled in the Court Christian for Heresy, they will proceed because it is an Ecclesiastical Crime and give sentence; It is true that by the 1 *Eliz.* if it be not such as hath been declared Heresy by the Four First General Councels they ought not, but the Court will not hear it; Whether must the Client go, but to the Temporal Judges, who are to explain and vindicate that Statute, and enquire whether it be Heresy within that Statute or no, and whether the Canons about Heresy, by which the Court proceeds, do not abate by virtue of that Statute? In this Case the Reverend Judges may, and let me speak with humble submission, ought to enquire whether the Court do not intrench upon the 25 *H.* 8. 21, *&c.* That Enacts no Canons shall be used but what have been received, and if the Court Christian put in ure such Canons, they are to be restrain'd, else these several Temporal Laws were made in vain, that have abolished such Foreign Canons. It seems to me the strongest plea in the World, to alledge, That this Cause is pronounced to be Simony by Canons that were never in force in *England*, or if they were, they are abrogate and obsolete; and, of this I am sure, none but the Temporal Courts are the proper Judges. For if the Court Christian be allowed to make use of what Pontificial Laws they please, there is no Bishop or Clergyman whom they cannot deprive for this very Crime, in Instances never yet heard of by Englishmen. *Godolphin* takes notice how much Simony in *England* differs from that of *Rome*, and saith,

The Canon Law, in this point of Simony, is of far wider extent then the practice with us. He enumerates Nine Cases, and concludes thus; with divers other Questions in the Canon Law relating to this subject, the solutions whereof are not of any moment to us, who are out of the Pope's Diocess. I shall add some other Cases, out of the Body of the Canon Law and Glos, or approved Authors; few whereof are Simony in *England*, though they are so at *Rome*, or *Bononia*: *Viz.* Repert Canon cap. of Simony.

Buying Reliques, Holy Roods, Agnus Dei's, Holy Bread, or Water, Chrism, Consecrated Beads and Candles, all Garments

Garments of the Mass-Priests, Corporals, and other Vests of the Altar, Consecrated Clouts, Bells, Chalices or Crucifixes, if you give more than the matter is worth. To become a Monk with hopes to be Abbot. To hope for a Bishoprick, or Benefice, or to promote any Affairs of the Patron, in expectation of the next Advowson, or to get a promise of it. To observe Canonical Hours, to get the Canonical Portion. To agree what Salary you shall have for serving a Cure was Anciently Simony, if not still. To ask a Benefice with Cure of Souls, for an unworthy Person, or for your self though never so fit. To confer a Benefice upon condition the Clerk do you no mischief. A Bishop so much as ask for a Bishoprick. For a Divinity Reader, or Catechist to take any thing of their Auditors, if the Lectures are endowed. To teach School for reward, if the Master has a Prebend or Salary from the Church (as they have, or ought in all Cities by the Canon Law.) To take Money for Preaching Lectures or Sermons for a Neighbour Minister, or to preach to gain Applause. To give Money to another to pray for you. For Favour or Affection to reconcile a Penitent, or conceal his Crimes, or for hatred to repel him. To present to a Benefice, as a recompence to a Clerks Merits, in many cases, is Simony. To present Kindred or Familiars with any Respect thereto, or to gain Honor or Repute To purchase the next Advowson, or the Perpetuity, if you give more then the Mannor is worth without it. To found a Prebend, on condition that you may retain it for your Life. To buy a Burial Place. To take Money for Burials, Christnings, Marriages, or any of the Popish Sacraments that confer Grace. To agree to Celebrate for you to morrow, if you will for me to day. To say Mass, hear Confessions, give the Sacraments with intention to get by it. A Bishop or Prebend to pay any thing for Installation; or Bishops to do Homage to the King for their Bishopricks. To give Money to the Bishop or his Secretary for Institution; which made * Bishop *Bedell* write all his Instruments himself, and follow the Incumbents out of his Doors, least they should give any thing to the Servants, *&c.* To give Money, little or much, to the Patrons Servants to speak to their Master to present. To promise a Bishop not to require

* The present Bishop of Sarum in his life.

quire a living of him when he Ordains *ſine titulo*. To give to a Patron Money to preſent, though he never doth; or a Clerk to give Bonds to reſign. To give Money for Admiſſion to a Religious Houſe, for a Fellowſhip in a Colledge, or a place in a Lazer, or any Hoſpital, for a Commandry of Malta, or Knight of Calatrava, or Alcantara, or any other Religious Order, or to be keeper of the Sepulchre. To give any Entertainment upon Admiſſion or Inſtallation. To buy any Place in Chancery, or Doctors Commons when they were all Clerks, as Originally they were; or any Eccleſiaſtical Juriſdiction or Office when exerciſed by Clerks and Unmarried Men, as Anciently they all were, but now it's not Simony; for as the Nature of the Function is altered, ſo is the Nature of the Purchaſe. To advocate or plead Eccleſiaſtical Cauſes for Money, was Simony heretofore ſay *Ahiſſiodorenſis* and *Aquinas*, but not now. To make a Notary Publick, in Eccleſiaſtical Matters, for Money.

I ſhall add, upon the Authority of the Gloſs, what I ſpake of before. To buy the Porters place, or Bellringers, or Butlers, or Candle-lighters, or the Grooms, or any other Office Eccleſiaſtical. Beſides theſe, we find many Nice enquiries in the Canoniſts about Simony; As whether one can be a Simoniſt by making a Contract with God, or the Pope? Or by buying a Slave his Liberty, that he may enter into Orders? Whether one can be Simonical without an intention to commit it? Whether it be Simony to give Money if the Incumbent ſhould have had the Benefice, though he had given nothing? Whether to give one Spiritual Thing for another? Whether *Gehazi* was a Simoniſt, who made no compact, or took any thing of the Profit till after his Maſter was reſtored? Whether to give Money to an Infidel on condition he be Baptiſed? Whether Clerks may take Money for Spiritual Offices in Places where they are not bound to officiate? 1. 9. 3. c. 1.

For what is Simony and what is not, is one of the moſt perplexed Queſtions in the Canon Law. So *Pius* the Fourth thought it, when he revoked many Decrees of his immediate Predeceſſor about it, though formed by 150 Cardinals, Biſhops, and Canoniſts, and approved by moſt Uni-

Universities in Christendom, because he adjudged them too rigorous.

And *Felinus* cites the Archdeacon of *Florence*, who saith as much of *Eugenius* and *Martin* the Fourth, and of one of the *Urbans*. For Ecclesiastical Simony being but *malum quia prohibitum*, and only a Pontifical notion, The Popes might correct their Breves as they saw occasion, and make that but Disobedience in one Pontificat, which was Simony in another. Which had the Promoters of this Cause well weighed, perhaps they would not have contended so fiercely to create a new Crime, and Sect of Simonists unknown to all the Canonists of Christendom, from *Innocent* the IV. to *Fagnanus*; and which is not to be found in any of the Rotaes Counsils and Decisions extant, if the case be stated true according to the Fact, which is, That the Jurisdiction was not sold, but let; and not to a Clerk but a Layman.

FINIS.

ERRATA.

PAge 8. line 17. for *Gratian* read *Seneca*. *ibid.* l. 23. r. *intelligunt*. P. 9. l. 6. Laical. *ibid.* l. 26. made use of. P. 10. l. 4. *Victoria*. P. 11. l. 5. intend. P. 12. l. 24. add and Impropriators, *&c.* P. 13. l. 36. *Covaruvias*. P. 14. l. 8, 9. *Covaruvias*. P. 19. l. 11. Canonists.